IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-2-2002

CORAM:

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

CRL.O.P.NO.23413 of 2001

K.Jayakumar .. Petitioner

-Vs-

State, by Inspector
of Police,
Central Crime Branch,
Chennai. .. Respondent

Petition under Section 482 of Criminal Procedure Code praying for an Order as stated therein.

!For petitioner : Mr.S.Anbalagan
^For respondent : Mr.V.Jayaprakash Narayanan
Govt. Advocate (Crl. Side)

: ORDER

The petitioner is the accused in X.Crime No.452 of 2001 on the file of the respondent and he seeks to quash the proceedings in the case.

2. Briefly, the facts stated in the petition are as follows.
The petitioner is employed as Deputy General Manager of M/s.Rail India Technical and Economic Services Limited, commonly known as RITES, which is an autonomous body under the Ministry of Railways, Government of India consisting of experts from various fields. Whenever there is a call letter from the buyers or suppliers to inspect the quality of the items manufactured by the sellers, the petitioner used to send his team of engineers to the manufacturer's factory for conducting third party inspection of the goods manufactured. In the year 2000, the Karnataka Urban Water Supply and Drainage Board and Gujarat Water Supply and Sewerage Board appointed the RITES as their Inspecting Agency to conduct the quality inspection on the ductile iron pipes manufactured by the complainant and accordingly, the petitioner deputed engineers from RITES to visit and inspect the pipes manufactured therein. On inspection, some pipes were found not upto the mark and were rejected by the engineers and the percentage of rejection was more than the specification and in good faith, the petitioner wrote a letter to the complainant asking them to take appropriate measures to improve the quality assurance activities in the factory. The complainant replied to the petitioner assuring to

implement the suggestions and requirements for improving the quality on their product and also thanked the petitioner for the feed back.

3.The complainant, on 13-7-2001, lodged a complaint against the petitioner before the II Metropolitan Magistrate, Chennai alleging that the petitioner had deliberately with malafide intention has prepared the letter dated 4-4-2001 and sent it to the complainant and the said letter contained discrepancies, false and fabricated information and the copies of the letter had been sent to various departments, which caused damage to the reputation and goodwill of the complainant Company. The complaint was forwarded under Section 156(3) Cr.P.C by the learned Magistrate to the Central Crime Branch and the crime came to be registered in X.Crime No.452 of 2001 under Sections 167, 469 and 1 93 IPC by the respondent.

4.The petitioner states that the allegations in the First Information Report do not make out any case against the petitioner. Section 1 67 IPC deals with the public servant who is charged with the preparation or translation of any document and in the present case there is no document and the letter dated 4-4-2001 was written by the petitioner to the complainant and hence the allegations made in the F.I.R do not constitute any offence under Section 167 IPC. Section 469 IPC deals with the persons who commit forgery in respect of a document or records and even according to the allegations in the FIR, the petitioner has not committed any forgery and he was the author of the letter dated 4-4-2001 and hence Section 469 IPC is not attracted. Section 193 IPC deals with a person who intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding and there is no allegation in the FIR that the petitioner gave false evidence in a judicial proceeding or fabricated false evidence for the purpose of using it in judicial proceedings and hence Section 193 IPC is also not attracted. The petitioner states that the allegations in the FIR do not constitute any offence punishable under Sections 1 67, 469 and 193 IPC and the continuation of the investigation by the respondent against the petitioner is an abuse of process of law and hence it has to be quashed.

5. Mr.S.Anbalagan, the learned counsel for the petitioner submits that none of the allegations in the FIR do constitute any offence as alleged therein and the proceedings in the case are liable to be quashed. Per contra, the learned Government Advocate on criminal side contends that the investigation in the case is in progress and the petitioner is not entitled to the prayer sought for. The facts are not disputed and the complainant has taken exception to the letter of the petitioner dated 4-4-2001. As rightly contended by the learned counsel for the petitioner, the petitioner in his letter has only asked the complainant to take appropriate measures to improve the quality and further asked them to take precautionary methods to avoid lots mix ups. The complainant in its reply dated 14-4-2001 has assured the petitioner that the suggestions will be implemented for improving the quality of the

product and has thanked the petitioner for the feed back and information from his side. Later on, the complainant took exception to the letter of the petitioner and has lodged the complaint alleging that the copies of the said letter have been sent to various buyers, customers and Government Departments and the act of the accused is derived away from his official duties and he is not expected in law to send such letter with remarks and false allegations and hence the accused had committed offences under Sections 167, 469 and 193 of IPC.

6. The first contention of the learned counsel for the petitioner Mr.S.Anbalagan is that the allegations in the complaint do not constitute an offence under Section 167 IPC. Section 167 IPC is extracted below.

"Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The section deals with the public servant who is charged with the preparation or translation of any document. The learned counsel for the petitioner relies on the synopsis to Section 167 IPC in the following commentaries:

"(1) THE AIR MANUAL (Civil and Criminal) 5th Edition, Section 167 SYNOPSIS- Clause 7(1): The words "charged with the preparation or translation of any document" in this section shows that there must be legal duty imposed on the public servant to prepare the document. Where there is no such duty the signing by the public servant of a document prepared by another is not an offence under this section. (1969) 71 Bom LR 669.

(2) THE PENAL LAW OF INDIA by Dr.Sir HARI SINGH GOUR, Tenth Edition, Volume II, 1987, Section 167 SYNOPSIS- Clause 2.Principle.- Public records owe their sanctity to the presumption that arises as to their correctness, and as representing the true record, of proceedings of the Courts and the public servants concerned. The tampering of such records by the very persons charged with the duty of preparing them correctly is, therefore, regarded as an egregious offence and as such punishable under this section, if the record was prepared to cause injury to any person. Otherwise, there being no motive to falsify the record, the misconduct, if any, is left for departmental punishments."

The above passages emphasize that Section 167 IPC contemplates the public records which are presumed to be correct and any tampering of such records by the persons charged with the duty of preparing them correctly is regarded as an offence punishable under the section. So, it is clear that there must be a legal duty imposed on the public servant to prepare the document. In the present case, there is no document as contemplated in the above section and it is only a letter. It is no doubt true that the petitioner is a public servant, but at the same time, he is not

charged with the preparation of the document in question and there is no legal duty impos ed on him to prepare the same. In fact, the complainant has stated in the complaint that the act of the accused is derived away from his official duties and in law, he is not expected to send such letter. In the above circumstances, Section 167 IPC is not attracted on the allegations made in the complaint, as rightly pointed out by the learned counsel for the petitioner.

7. The next question is whether the allegations in the complaint constitute an offence under Section 469 IPC. Section 469 IPC reads as follows.
"Whoever commits forgery, intending that the document forged shall harm the reputation of any party, knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

The section deals with the persons who commit forgery in respect of document or records. Even according to the complainant, the petitioner is the author of the letter in question and there is no forgery in it. In fact, the petitioner admits the letter dated 4-4-2001 as his. In such circumstances, the question of forgery does not arise at all and Section 469 IPC is not attracted on the allegations of the complaint.

8. The remaining offence is regarding Section 193 IPC, which is extracted below.
"Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment
of either description for a term which may extend to three years, and shall also be liable to fine."

The section deals with the person who intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding. There are no allegations in the complaint that the petitioner gave false evidence in judicial proceedings or fabricated false evidence for the purpose of using it in judicial proceedings. Hence, the allegations in the complaint do not make out an offence under Section 193 IPC also.

9. To sum up, the allegations in the complaint do not constitute any offence punishable under Sections 167, 469 and 193 IPC and in such circumstances, the continuation of the investigation by the respondent against the petitioner is only an abuse of process of law and the proceedings in the case are thus liable to be quashed.

10. In the result, the petition is allowed and the proceedings, against the petitioner, in the case in X.Crime No.452 of 2001 on the file of the respondent are quashed.

25-2-2002
Index: yes/no
vks
To
1.The Inspector of Police,
Central Crime Branch,
Chennai.

2.The Public Prosecutor,
High Court, Madras.